
**Water Acquisition and Management Subcommittee Position Paper:
Voluntary Irrigation Forbearance in the MRGCD Service Area
August 11, 2003 Final**

The Middle Rio Grande (MRG) Endangered Species Act (ESA) Collaborative Program (Program) recognizes the necessity of acquiring water to supplement stream flows in the Rio Grande to assist in the recovery of the Rio Grande silvery minnow and other species, and to offset any increased depletions of the river that may result from projects undertaken by the Program to restore endangered species habitat. In this document, the possibility of using a voluntary irrigation forbearance program to support these goals is examined.

Introduction to the Forbearance Concept:

- Irrigation forbearance is the commitment by a practicing irrigator to “forbear” the use of water for a period of time, either by leaving previously irrigated land fallow or simply not irrigating, and legally reassigning the water allocated for use on that land to other uses. In the MRG valley, where there has been no water-rights adjudication, forbearance would be of a right to divert and consume water, based on a history of such diversion and consumption.
- Participants could agree to forbear for a single season, multiple seasons, or at regular intervals (such as once every 5 years) for some period into the future.
- The water secured through the Program could be stored in an upstream reservoir and subsequently be released following an agreed-upon schedule to benefit endangered species, using procedures similar to those followed by irrigators.

Potential for Implementation of a Voluntary Irrigation Forbearance Program in the MRG Valley:

- The Middle Rio Grande Conservancy District (MRGCD) is a major water user that serves approximately 11,000 irrigators along the MRG. Therefore, it is a potential source of flexibility to aid in attaining water supply goals for the ESA Program.
- With the support of the WAM, MRGCD has initiated a forbearance feasibility study within its system. The results of this feasibility study will be used by the MRGCD and the Program to determine what, if any, additional steps need to be taken to pursue a forbearance program for the middle Rio Grande. The MRGCD has expressed willingness to seek input from the WAM in designing and completing this study.

Legal, Political, and Technical Requirements:

In practice, a forbearance program involving the MRGCD will be quite complex and involve a number of political, legal, and technical requirements, including the following.

- Any water to be acquired through forbearance in the MRGCD service area should be on a voluntary basis.
- Operation of any forbearance program should protect against any forfeiture or impairment of water rights, either of the forbearer or other water-rights holders.
- Voluntary irrigation forbearance would be most feasible during years of full District irrigation supply, and for which there are no Rio Compact restrictions on upstream storage. Voluntary irrigation forbearance during years of less than a full irrigation supply may be feasible, but would involve significantly more technical and administrative challenges.
- The Collaborative Program, acting through one or more Program Signatories, would need the ability to store any water obtained through voluntary forbearance in upstream reservoirs and manage the storage and release of that water, including carry-over to future years.

- Only currently irrigated lands can be considered for a forbearance program. Specific criteria would need to be established to determine which irrigated lands are eligible.
- The compliance of participants would need to be monitored.
- Participation by MRGCD in any voluntary forbearance program would require approval in advance by MRGCD Board of Directors. If participation in a voluntary forbearance program would potentially affect Pueblo lands or water, approval by the appropriate governing entity of each potentially affected Pueblo would also be required.
- Any voluntary forbearance program would need to be implemented in a way that would minimize operational impacts on the MRGCD. Specifically, such a program could not adversely impact the ability of the MRGCD to deliver water to irrigators who are not participating in voluntary forbearance.

Issues Requiring Further Resolution

A number of outstanding issues still need to be resolved before a forbearance program can be effectively implemented:

- Determination of the quantity of water required for the forbearance program and the quantity of additional flow in the river that could reasonably be provided by forbearance toward meeting Program goals.
- Protection of priority users in the absence of a water-rights adjudication,
- Resolution of the role of the Office of the State Engineer in approving forbearance transactions.
- Determination of whether water resulting from a potential voluntary forbearance program should be stored in a new water bank or conservation pool created for Program purposes, or in the existing MRGCD water bank.
- Determination of criteria and process for implementing forbearance:
 - How would an irrigator prove eligibility to participate in a voluntary forbearance program?
 - How, when, and to whom would payments be made?
 - How much water and how much money would be conveyed for forbearance during a year that does not turn out to be a full-supply year?
- Determination of which areas of the District have the most potential for an effective forbearance program. For example, to what degree does the presence of Pueblos in the Albuquerque and Belen Divisions constrain forbearance opportunities? Which areas already have a practicing rotational water delivery system to facilitate implementation of the forbearance program?
- Determination of whether any active irrigators / water-rights holders may be willing to forbear
 - Who are they?
 - Where are their fields located?
 - How often are these irrigators willing to commit water?
 - What would they like in exchange for their forbearance?
 - How much water could they, cumulatively, be willing to commit to the program?
- Determination of what compensation the Program would provide to the MRGCD, for the increased management and operational expenses it would incur as a result of a forbearance program.

Conclusions:

- Institutionalizing a method for acquiring supplemental water is a goal for the ESA Collaborative Program working through the Water Acquisition and Management Subcommittee. Voluntary irrigation forbearance may be a mechanism for the Program to acquire water to help meet Program goals.

- The Program should acquire a scientifically sound understanding of the flow regime required to support the listed species in order to determine the amount of supplemental water required by the Program.
- The MRGCD has initiated a study, with input from the WAM, on the technical feasibility of forbearance in non-Pueblo portions of the District's system, upon which a forbearance program could be designed. If technical feasibility is established through the MRGCD study, an assessment of the willingness of individual irrigators to participate in the forbearance program should then be conducted,
- The voluntary forbearance program should be entirely voluntary and it must carefully protect the water rights of participants from forfeiture or impairment.
- The voluntary forbearance program must protect the ability of the MRGCD to deliver water to its irrigators who are not forbearing.
- Ultimately, the Program and the MRGCD will need to work together closely to identify and implement collaborative approaches to help attain Program goals for the near- and long-term benefit of listed species.